IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No.2222 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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CHAUDHARY YOGESHKUMAR @ VISHNUBHAI KESHAVLAL & ANR. - Appellants

Versus

STATE OF GUJARAT – Respondent.

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Appearance :
MR MEHUL SHARAD SHAH for Appellants.
MR KT DAVE, APP for Respondent.
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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 23/02/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Instant appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, is directed against judgment dated October 6, 2005 rendered by the learned

Additional Sessions Judge & Presiding Officer, Fast Track Court No.1, Mehsana, in Sessions Case No.150 of 2005 by which the two appellants are convicted for commission of offences punishable under Sections 489B as well as 489E read with Section 114 of the Indian Penal Code (IPC for short) and each sentenced to R.I. for ten years and fine of Rs.1,000=00, in default S.I. for one month.

2, The facts emerging form the record of the case are as under:

One Mr.Shakaraji Babaji Thakore, residing in Aathamno Vas of Village Kherva, Taluka & District: Mehsana, is running a grocery shop near temple of Matri Mata, Kherva. The incident is alleged to have taken place on October 18, 2003. In the morning at about 7.00 a.m., Shakaraji Babaji Thakore opened his shop and started business. At about 11.30 a.m., two persons came on motorcycle. The motorcycle was halted near the grocery shop of Shakaraji Thakore. The person, who was driving the motorcycle, handed over a note of Rs.100/- denomination to pillion rider and asked him to purchase three '*tulsi gutkha*' packets from the shop of Shakaraji Thakore. Accordingly, the pillion rider came to the shop of Shakaraji and asked Shakaraji to give three packets of

'*tulsi gutkha*'. The pillion rider also handed over currency note of Rs.100/- to Shakaraji Thakore. Shakaraji looked at the note and told the pillion rider that the currency note given to him was counterfeit. Thereupon, the pillion rider approached the person, who was driving the motorcycle and informed him that the shop-keeper was refusing to sell three packets of '*tulsi gutkha*' on the ground that the note was counterfeit. Meanwhile, Shakaraji Thakore showed the currency note to Thakore Babuji Mafaji and Thakore Becharji Chanduji, who were present at his shop, to ascertain whether currency note was counterfeit. Those two persons also opined that the note presented by the pillion rider was counterfeit. An attempt was made by those two persons to flee, but the same was thwarted by Shakaraji Thakore and others. On being interrogated by Shakaraji, the person, who was driving the motorcycle, disclosed his name to be Yogeshkumar Keshavlal Chaudhary, i.e. the appellant No.1 herein, whereas the pillion rider disclosed his name to be Prakashbhai Khodabhai Chaudhary, i.e. the appellant No.2 herein. Thereafter, Shakaraji Thakore deputed a boy to call Police Constable Virjibhai, who was serving in Kherva Outpost falling within the jurisdiction of Mehsana Taluka Police Station. Unarmed Police Constable Virjibhai accordingly reached the shop of Shakaraji Thakore.

Shakaraji handed over the currency note to unarmed Police Constable Virjibhai and lodged his complaint. Police Constable Virjibhai brought the appellants at the outpost and arrested them. The complaint lodged by Shakaraji Thakore was investigated by Ravindrabhai Dhanjibhai Mitra, who was then Police Inspector, Mehsana Taluka Police Station. He sent the currency note to the Manager, SBI, Mehsana, to ascertain whether the note was counterfeit. The Manager of the bank opined that, *prima facie,* the note was counterfeit note. The note was also forwarded to expert for his opinion as to whether the note was counterfeit. The expert also opined that the currency note in question was counterfeit. On completion of investigation, the appellants were chargesheeted in the Court of learned Chief Judicial Magistrate, Mehsana, for commission of offence punishable under Section 489B read with Section 114 IPC.

3. As the offence punishable under Section 489B IPC is exclusively triable by a Court of Sessions, the case was committed to the Sessions Court, Mehsana, for trial where it was numbered as Sessions Case No.150 of 2005.

4. The learned Additional Sessions Judge to whom the case was made over for trial framed necessary charge against the appellants at Exh.7. It was read over and

explained to them. They pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined: (1) panch Natwarbhai Sendhabhai Patel as P.W.-1 at Exh.13; (2) panch Natwarlal Tribhuvandas Patel as P.W.-2 at Exh.16; (3) complainant Shakaraji Babaji Thakore before whom the appellants had allegedly produced fake currency note, as P.W.-3 at Exh.18; (4) Becharji Chanduji Thakore as P.W.-4 at Exh.20; (5) Babuji Mafaji Thakore as P.W.-5 at Exh.21; (6) A.S.I. Punampuri Ganeshpuri Gosai as P.W.-6 at Ex.22; (7) Unarmed Police Constable Virjibhai Laxmanbhai Hadula as P.W.-7 at Exh.25; (8) Investigating Officer Ravindrabhai Dhanjibhai Mitra as P.W.-8 at Exh.26; and, (9) another Investigating Officer Hirabhai Nanjibhai Parmar as P.W.-9 at Exh.28, to prove its case against the appellants. The prosecution also produced documentary evidence such as panchnama indicating seizure of currency note bearing No. 8HP 508559 of Rs.100/- denomination at Exh.14; panchnama of seizure of motorcycle, chasis number of which is DHV-BKB-82036, at Exh.15; complaint lodged by Shakaraji Thakore at Exh.19; intimation by Police Inspector to Manager, SBI, Mehsana, to give opinion whether currency note was counterfeit at Exh.27; expert's opinion on suspected currency note at Exh.29; etc. in support of its case against the appellants.

5. After recording of evidence of prosecution witnesses was over, the learned Judge of the trial Court explained to the appellants the incriminating circumstances, which were appearing against them, in the evidence of the prosecution witnesses, and recorded their further statements as required by Section 313 of the Code of Criminal Procedure, 1973. In further statement, each appellant claimed that he was innocent and was falsely implicated in the case. However, no defence evidence was adduced at all.

6. On appreciation of evidence adduced by the prosecution, the learned Judge of the trial Court held that it was proved by the prosecution beyond reasonable doubt that the appellants were in possession of currency note of Rs.100/- denomination bearing No.8HP 508559, which was counterfeit and as they had used the counterfeit note as genuine and were also found making or using the document resembling counterfeit note, they were liable to be convicted for commission of offences punishable under Sections 489B & 489E read with Section 114 IPC. In view of abovereferredto conclusion, the learned Judge has convicted the appellants for commission of offences punishable under Sections 489B & 489E read

with Section 114 IPC, and imposed sentence on each appellant referred to above by judgment dated October 6, 2005 giving rise to instant appeal.

7. This Court has heard Mr.Mehul Sharadbhai Shah, learned counsel of the appellants, and Mr.K.T.Dave, learned Additional Public Prosecutor for the State, at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case.

8. As noticed earlier, the case of the prosecution is that on October 18, 2003, the appellants were found in possession of the counterfeit note, which was attempted to be used by them for purchasing three packets of '*tulsi gutkha*', and handed over the said note to complainant Shakaraji Bababji Thakore of Village Kherva. However, the testimony of complainant Shakaraji Babaji Thakore recorded at Exh.18 makes it clear that on October 18, 2003, he had not attended his shop at all and that on that day, business was done at his shop by his son Shailesh. What is mentioned by witness Shakaraji Thakore in his substantiative evidence before the Court is that

he had learnt that an altercation had taken place between the purchasers on one hand and his son Shailesh on the other, as a result of which, he had had gone to his shop and learnt that two persons had attempted to hand over a fake currency note of Rs.100/- denomination to him. In his cross-examination, the witness has, in terms, admitted that on October 18, 2003, he was present in his house and at that time, a boy had come to call him at the shop. In cross-examination by the learned counsel of the appellant No.2, the witness has stated that he was not knowing as to who had handed over currency note of Rs.100/- denomination at his shop and that he had no personal knowledge about the incident at all. Thus, the case of the prosecution that the appellant No.2, who was pillion rider, had presented the counterfeit currency note, at the instance of appellant No.1, who was driving the motorcycle, before complainant Shakaraji Babaji Thakore, is not proved at all. Further, complainant Shakaraji Thakore has stated in his testimony before the Court that the Police had reduced into writing the complaint to suit its own purpose and that he had signed the same. Therefore, the whole case of the prosecution against the appellants becomes highly doubtful. It is relevant to notice that Shailesh, who is son of complainant Shakaraji Babaji Thakore and who, according

to Shakaraji Thakore, was present at the shop, was neither cited as witness in the charge-sheet nor is examined by the prosecution. It is also the case of the prosecution that on counterfeit note being presented by the pillion rider before complainant Shakaraji Thakore, the complainant had shown the note to two witnesses, i.e. Becharji Chanduji Thakore and Babuji Mafaji Thakore, who were present at the shop, but both these witness haves stated before the Court that they were not present at the shop at all and had visited the shop after the incident was over. What is claimed by witness Becharji Thakore, who is examined at Exh.20, is that he had learnt about the incident from others and that he was present at his house as it was Wednesday. Similarly, witness Babuji Thakore examined at Exh.21 has also stated in his cross-examination that he had no personal knowledge about the incident and had visited the shop out of curiosity as others had visited the shop of Shakaraji Thakore. He has also further stated that in his presence neither the Police had arrived nor the appellants were arrested by the Police. Again, A.S.I. Mr.Punamgiri Ganeshgiri Gosai, examined by the prosecution at Exh.22, has stated that before lodging the complaint by Shakaraji Babaji Thakore, panchnama regarding seizure of currency note was already made and no counterfeit currency note was found from the

possession of any of the appellants when the appellants were in his custody. The statement of the Police Officer makes the case of the prosecution completely improbable. What is relevant to mention is that Investigating Officer Mr.Ravindra Mitra in his testimony recorded at Exh.26 has stated that search of person of the appellants had not resulted into recovery of any counterfeit note nor search of their houses had resulted into find of any counterfeit note. Thus, it is not satisfactorily proved by the prosecution that the appellants were in possession of the counterfeit currency note of Rs.100/- denomination. The case of the prosecution that so-called counterfeit note, which was produced by the prosecution, was handed over by complainant Shakaraji Thakore is not proved at all. Neither it is claimed by Shakaraji Thakore in his testimony before the Court nor two panch witnesses in whose presence the counterfeit note was allegedly handed over by complainant Shakaraji Thakore to the Police, have stated that the counterfeit currency note was, in fact, handed over by complainant Shakaraji Thakore to the Police. Even if one comes to a conclusion that the appellants were found in possession of the counterfeit note, no evidence is adduced by the prosecution to show that the appellants knew that the notes were of such a nature that a mere look at them would convince anybody

that it was a counterfeit. Under the circumstances, this Court is of the opinion that the learned Judge of the trial Court was not justified in convicting the appellants for commission of offences punishable under Sections 489B & 489E read with Section 114 IPC.

9. For the foregoing reasons, the appeal succeeds. Judgment dated October 6, 2005 rendered by the learned Additional Sessions Judge & Presiding Officer, Fast Track Court No.1, Mehsana, in Sessions Case No.150 of 2005 convicting the appellants for commission of offences punishable under Sections 489B & 489E read with Section 114 of IPC as well as sentencing each of them to R.I. for ten years and fine of Rs.1,000/-, in default S.I. for one month, is hereby set aside. Instead, the appellants are acquitted. The respondent shall release the appellants from the Jail forthwith unless their presence or presence of any of them is needed in the Jail with reference to any other case. Muddamal be disposed of in terms of directions given by the learned Judge of the trial Court in the impugned judgment.

[J.M.PANCHAL, J.]

[H.B.ANTANI, J.]

Rajendra